



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Social and Health Services, Aging and Disability Services Administration

Permanent Rule Only

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes

☒ No

If Yes, explain:

Purpose: The department is amending and adding sections to these rules as a result of legislative activity during session and to be consistent with newly passed state law, Engrossed Substitute Senate Bill 5708-Long-Term Care Services.

The department added these new sections: WAC 388-78A-2032 and WAC 388-78A-2035.

Citation of existing rules affected by this order:

Repealed: None

Amended: WAC 388-78A-2020 and WAC 388-78A-2030.

Suspended: None

Statutory authority for adoption: Chapter 18.20 RCW

Other authority : NA

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 12-01-113 on December 21, 2011 (date).

Describe any changes other than editing from proposed to adopted version: See Attachment A

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A

Name:

phone () _____

Address:

fax () _____

e-mail _____

Date adopted:

March 20, 2012

NAME (TYPE OR PRINT)

Judy Johnson

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 22, 2012

TIME: 8:32 AM

WSR 12-08-004

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>2</u>	Amended	<u>2</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>2</u>	Amended	<u>2</u>	Repealed	_____

**Rule Making Order CR-103
Chapter 388-78A WAC Boarding Home Licensing Rules
ATTACHMENT A**

Describe any changes other than editing from proposed to adopted version:

The changes, other than editing follow: Changes are shown with the new language underlined and deleted text lined through.

WAC 388-78A-2020 Definitions.

“Wellness program” means an educational program provided by the boarding home. It is a proactive and preventative approach to assist residents and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

WAC 388-78A-2030 Boarding home license required.

(1) A boarding home license is required to operate or maintain a boarding home as defined in chapter 18.20 RCW and this chapter.

(2) A boarding home license is required when any person other than a family member provides housing, one or more basic services, and one or more of the following:

(a) Assumes general responsibility for the safety and well-being of the residents except as provided in WAC 388-78A-2032;

(b) Provides domiciliary care which includes:

(i) Providing assistance with activities of daily living, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2190;

(ii) Providing health support services, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2200; or

(iii) Providing intermittent nursing services, either directly or indirectly as described in WAC 388-78A-2310.

(3) A boarding home license is required if the provision of items and services to a nonresident individual requires ongoing evaluation or assessment, ongoing care and service planning, ongoing intervention or ongoing monitoring of a nonresident individual's well-being as specified in this chapter.

(4) A boarding home may provide adult day services as defined in WAC 388-78A-2020 and as specified in WAC 388-78A-2360 to nonresident individuals, including independent living residents, on the boarding home premises.

NEW SECTION

WAC 388-78A-2032 Boarding home license not required.

(2) A boarding home license is not required for one or more of the following items and services that may, upon request of the nonresident individual, be provided to a nonresident individual:

(a) Emergency assistance provided on an intermittent or nonroutine basis;

(b) Systems including technology-based monitoring devices employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services;

(c) Scheduled and nonscheduled blood pressure checks;

(d) Nursing assessment services to determine whether referral to an outside health care provider is recommended;

(e) Making and reminding of health care appointments;

(f) Preadmission assessment, for the purposes of transitioning to a licensed care setting;

(g) Medication assistance which may include reminding or coaching the nonresident individual, opening the nonresident individual's medication container, using an enabler, and handing prefilled insulin syringes to the nonresident individual;

(h) Prefilling insulin syringes which must be performed by a nurse licensed under chapter 18.79 RCW;

(i) Assessment to determine cause of a fall;

(j) Nutrition management and education services;

(k) Dental services;

(l) Wellness programs as defined in WAC 388-78A-2020; or

(m) Services customarily provided under the landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
WAC 388-78A-2032 Requested the term “wellness program” be defined.	“Wellness program” definition is added to WAC 388-78A-2020, and referred to under WAC 388-78A-2032.
Requested clarification regarding the boarding home’s ability to provide adult day services to nonresident individuals, including independent living residents, on the boarding home premises.	The department added language to clarify that, for the purposes of adult day services, nonresident individuals includes independent living residents in WAC 388-78A-2030.

cc: DSHS Rules Coordinator

AMENDATORY SECTION (Amending 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-2020 Definitions. **"Abandonment"** means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Adult day services" means care and services provided to a nonresident individual by the boarding home on the boarding home premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a boarding home license.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

"Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Boarding home" may also include persons associated with the boarding home to carry out its duties under this chapter.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing hands-on personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of a boarding home, except volunteers who are directly supervised. Direct supervision means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW

70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

"Department" means the Washington state department of social and health services.

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Document" means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the boarding home either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the boarding home; or

(3) Intermittent nursing services, if provided directly or indirectly by the boarding home.

"Enforcement remedy" means one or more of the department's responses to a boarding home's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Food service worker" means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackaged food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;

(8) Assisting the resident to obtain and maintain glasses,

hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or

(12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

(1) Blood glucose testing;

(2) Puree diets;

(3) Calorie controlled diabetic diets;

(4) Dementia care;

(5) Mental health care; or

(6) Developmental disabilities care.

"Independent living unit" means:

(1) Independent senior housing;

(2) Independent living unit in a continuing care retirement community or other similar living environments;

(3) Boarding home unit where domiciliary services are not provided; or

(4) Boarding home unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means the person, as defined in this chapter, to whom the department issues the boarding home license.

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

"Majority owner" means any person that owns:

(1) More than fifty percent interest; or

(2) If no one person owns more than fifty percent interest, the largest interest portion; or

(3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means the person defined in this chapter, providing management services on behalf of the licensee.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of

certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (boarding homes), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Maximum facility capacity" means the maximum number of individuals that the boarding home may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is ~~((a-[at]))~~ at least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication assistance" means assistance with

self-administration of medication rendered by a nonpractitioner to a resident of a boarding home in accordance with chapter 246-888 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by a boarding home related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in an unlicensed room located within a boarding home ~~((and may receive one or more of the services listed in WAC 388-78A-2030 (2)(a) through (g)))~~. A nonresident individual may not receive from the boarding home:

~~(1) Domiciliary care ((as defined in this section,)) directly or indirectly ((by the boarding home, and may not receive)); or~~

~~(2) The items or services listed ((under)) in the definition of "general responsibility for the safety and well-being of the resident" ((as defined in this section)), except ((during the time)) as allowed under WAC 388-78A-2032 or when the person is receiving adult day services ((as defined in this section)).~~

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by

an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of a boarding home:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that boarding home if any person affiliated with the new licensee was affiliated with the prior licensee at the same boarding home. A person is considered affiliated with the licensee if the person is an applicant for the boarding home license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident; or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

"Prospective resident" means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the boarding home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of boarding home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the boarding home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in a boarding home, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the boarding home;

(3) Receives basic services; and

(4) Receives one or more of the services listed (~~(under)~~) in the definition of "general responsibility for the safety and well-being of the resident", and may receive domiciliary care or respite care provided directly, or indirectly, by the boarding home. A nonresident individual may receive services that are permitted under WAC 388-78A-2032.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home if there is no legal representative. The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

"Respite care" means short-term care for any period in excess

of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any boarding home employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any boarding home; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Wellness program" means an educational program provided by the boarding home. It is a proactive and preventative approach to assist residents and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

"Willful" means the deliberate, or nonaccidental, action or inaction by an alleged perpetrator that he/she knows or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

AMENDATORY SECTION (Amending 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2030 ((Applicability)) Boarding home license required. (1) A ~~((person must have a))~~ boarding home license ~~((issued by the department under chapter 18.20 RCW and this chapter, except as otherwise exempted by RCW 18.20.170 and subsection (2) of this section, if the person advertises as, or operates, or maintains a facility that meets the definition of a "boarding home" in this chapter, within Washington state and provides housing, one or more basic services, and one or more of the following))~~ is required to operate or maintain a boarding home as defined in chapter 18.20 RCW and this chapter.

(2) A boarding home license is required when any person other than a family member provides housing, one or more basic services, and one or more of the following:

(a) Assumes general responsibility for the safety and well-being of the residents except as provided in WAC 388-78A-2032;

(b) Provides domiciliary care which includes:

(i) Providing assistance with activities of daily living, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2190;

~~((c) Provides))~~ (ii) Providing health support services, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2200; or

~~((d) Provides))~~ (iii) Providing intermittent nursing services, either directly or indirectly as described in WAC 388-78A-2310.

~~((2))~~ (3) A boarding home license is ~~((not required for one or more of the following services that may be provided to a nonresident individual. These services may not include continual care or supervision of a nonresident individual without a boarding home license:~~

~~(a) Emergency assistance provided on an intermittent or nonroutine basis to any nonresident individual; or~~

~~(b) Systems employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services for nonresident individuals; or~~

~~(c) Infrequent, voluntary, and nonscheduled blood pressure checks for nonresident individuals; or~~

~~(d) Nurse referral services provided at the request of a nonresident individual to determine whether referral to an outside health care provider is recommended; or~~

~~(e) Making health care appointments at the request of nonresident individuals; or~~

~~(f) Preadmission assessment, at the request of the nonresident individual; or~~

~~(g) Services customarily provided under landlord tenant agreements governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW; or~~

~~(h) Housing nonresident individuals who, without ongoing assistance from the boarding home, initiate and arrange for services with a practitioner licensed under Title 18 RCW or a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or other persons as permitted by the boarding home.~~

~~(3) This section does not prohibit a boarding home from furnishing written information concerning available community resources to nonresident individuals or the individual's family members or legal representatives. However, the boarding home may not require the use of any particular service provider)) required if the provision of items and services to a nonresident individual requires ongoing evaluation or assessment, ongoing care and service planning, ongoing intervention or ongoing monitoring of a nonresident individual's well-being as specified in this chapter.~~

~~(4) The boarding home may provide adult day services as defined in WAC 388-78A-2020 and as specified in WAC 388-78A-2360 to nonresident individuals, including independent living residents, on the boarding home premises.~~

NEW SECTION

WAC 388-78A-2032 Boarding home license not required. (1) A boarding home license is not required for the housing, or services, customarily provided under landlord tenant agreements governed by the residential tenant act, chapter 59.18 RCW, or when housing nonresident individuals who chose to participate in the programs or services in subsection (2) of this section when offered by the boarding home licensee or the licensee's contractor.

(2) A boarding home license is not required for one or more of the following items and services that may, upon request of the nonresident individual, be provided to a nonresident individual:

(a) Emergency assistance provided on an intermittent or nonroutine basis;

(b) Systems including technology-based monitoring devices employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services;

(c) Scheduled and nonscheduled blood pressure checks;

(d) Nursing assessment services to determine whether referral to an outside health care provider is recommended;

(e) Making and reminding of health care appointments;

(f) Preadmission assessment, for the purposes of transitioning to a licensed care setting;

(g) Medication assistance which may include reminding or coaching the nonresident individual, opening the nonresident

individuals's medication container, using an enabler, and handing prefilled insulin syringes to the nonresident individual;

(h) Prefilling insulin syringes which must be performed by a nurse licensed under chapter 18.79 RCW;

(i) Assessment to determine cause of a fall;

(j) Nutrition management and education services;

(k) Dental services;

(l) Wellness programs as defined in WAC 388-78A-2020; or

(m) Services customarily provided under the landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW.

(3) This section does not prohibit a boarding home from furnishing written information concerning available community resources to nonresident individuals or the individual's family members or legal representatives. However, the boarding home may not require the use of any particular service provider.

NEW SECTION

WAC 388-78A-2035 Disclosure statement to nonresident individuals. (1) A boarding home must provide each nonresident individual a disclosure statement upon admission and at the time that additional services are requested by the nonresident individual.

(2) The disclosure statement must notify the nonresident individual that:

(a) The resident rights of chapter 70.129 RCW do not apply to nonresident individuals;

(b) Licensing requirements for boarding homes under this chapter do not apply to nonresident units; and

(c) The jurisdiction of the long-term care ombudsman does not apply to nonresident individuals and nonresident units.